

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

RICHARD A. VOLPE,	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	3:98 CV 972 (CFD)
THE PAUL REVERE LIFE INSURANCE	:	
COMPANY,	:	
Defendant	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

The plaintiff, Richard A. Volpe, brings this diversity action against the defendant, The Paul Revere Life Insurance Company, alleging several violations of Connecticut law. Specifically, he alleges the defendant breached the terms of a disability insurance policy issued to him. He also claims the defendant breached the covenant of good faith and fair dealing implied in the contract. In addition, he contends the defendant violated several provisions of the Connecticut Unfair Insurance Practices Act (“CUIPA”), Conn. Gen. Stat. § 38a-815 et seq. The plaintiff seeks compensatory and punitive damages, costs and attorney’s fees, and other relief.

The defendant has filed a motion for summary judgment as to all claims except the plaintiff’s breach of contract claim. The motion for summary judgment [Document #62] is GRANTED IN PART and DENIED IN PART.

I. Background

The parties do not dispute the following facts.

The defendant issued a disability insurance policy to the plaintiff on February 5, 1985. On February 20, 1997, the plaintiff submitted a claim for total disability due to injuries allegedly received from a fall on November 26, 1996. The defendant paid him benefits while it investigated

his claim, from March 1997 to February 12, 1998. On the latter date, the defendant denied his claim. The defendant sent the plaintiff a letter indicating two bases for the denial of coverage: (1) since the plaintiff's occupation was essentially "sedentary" in nature, he was still able to perform those duties; and (2) video surveillance of the plaintiff showed him at a health club engaged in weight lifting and other strenuous physical activities inconsistent with his disability claim.

II. Summary Judgment

In the context of a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that the moving party is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). A court must grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact." Miner v. City of Glens Falls, 999 F.2d 655, 661 (2d Cir. 1993) (internal quotation marks and citation omitted). In ruling on a motion for summary judgment, however, the Court resolves "all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide." Aldrich v. Randolph Cent. Sch. Dist., 963 F.2d 520, 523 (2d Cir. 1992). Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." Bryant v. Maffucci, 923 F.2d 979, 982 (2d Cir. 1991), cert. denied, 502 U.S. 849 (1991); see also Suburban Propane v. Proctor Gas, Inc., 953 F.2d 780, 788 (2d Cir. 1992).

III. Discussion

As an initial matter, the defendant concedes that there are genuine issues of material fact precluding summary judgment as to the plaintiff's breach of contract claim in Count One of the

complaint. The Court further concludes that there are genuine issues of material fact as to the plaintiff's claim in Count Two of the complaint that the defendant breached the implied covenant of good faith and fair dealing, including whether the defendant breached the disability insurance contract intentionally and with improper motive. See Wadia Enters., Inc. v. Hirschfeld, 618 A.2d 506, 511 (Conn. 1992). However, the Court concludes that summary judgment is appropriate as to the plaintiff's remaining claims.

A. Unfair Claim Settlement Practices

In Count Three of the complaint, the plaintiff alleges that the defendant committed unfair claims settlement practices by engaging in a "general business practice" in violation of CUIPA, Conn. Gen. Stat. § 38a-816(6).¹ He alleges the defendant misrepresented facts, failed to reasonably investigate claims, and denied claims without reasonable explanations, among other conduct. He contends that the defendant acted in this manner in denying his claim for benefits under the disability insurance policy and in denying similar claims of other insureds. See Compl. ¶¶15-18.

"[A] claim under CUIPA predicated upon alleged unfair claim settlement practices in violation of § 38a-816(6) requires proof that the unfair settlement practices were committed or performed with such frequency as to indicate a general business practice." Lees v. Middlesex Ins. Co., 643 A.2d 1281, 1285 (Conn. 1994). The Court concludes that the plaintiff has failed to

¹CUIPA, Conn. Gen. Stat. § 38a-815 provides, in relevant part: "No person shall engage in this state in any trade practice which is defined in section 38a-816 as . . . an unfair method of competition or an unfair or deceptive act or practice in the business of insurance . . ." Section 38a-816 further defines "unfair methods of competition and unfair and deceptive acts or practices in the business of insurance," in part, as including misrepresentations and false advertising of insurance policies, and unfair claim settlement practices. See § 38a-816(1), (6) (providing detailed definitions).

present sufficient evidence to create a genuine issue of material fact as to whether the defendant committed the wrongful acts alleged in Count Three with the frequency required to indicate “a general business practice.” See Quimby v. Kimberly Clark Corp., 613 A.2d 838, 845 (Conn. App. Ct. 1992). Even assuming the plaintiff has presented sufficient evidence to show the defendant acted in bad faith in its dealings with him, he has not presented sufficient evidence of similar conduct by the defendant in relation to other insureds. Cf. Aguilar v. United Nat’l Ins. Co., 825 F. Supp. 456, 458 n.1 (D. Conn. 1993) (involving a motion to dismiss).

Resolving all ambiguities and drawing all inferences in favor of the plaintiff, the Court concludes the statements from the defendant’s 1993 and 1995 annual reports identified by the plaintiff are insufficient as a matter of law to demonstrate—or raise an inference—that the defendant committed unfair settlement practices with regard to other insureds. See Pl.’s Mem. Opp’n Def.’s Mot. Partial Summ. J. Ex. 1, ¶5. These statements only address the defendant’s financial concerns and general business trends in the insurance industry; they do not specifically relate to claim settlement practices. See id. Nor has the plaintiff offered other evidence of the defendant’s unlawful actions concerning other insureds.² Accordingly, because a “claim of unfair settlement practices under CUIPA requires a showing of more than a single act of insurance misconduct,”

²To the extent the plaintiff requests additional time to discover further evidence, that request is denied. The plaintiff has had sufficient time to conduct discovery in this case. In particular, discovery in this case began in 1998 and has continued through at least June 1, 2001. During this time, the plaintiff filed only one motion to compel discovery. The Court referred that motion to U.S. Magistrate Judge William Garfinkel, who granted in part the plaintiff’s requests for answers to interrogatories concerning lawsuits involving other insureds. The plaintiff filed no other discovery motions concerning other insureds, however. The plaintiff has also failed to present sufficient evidence that its efforts to conduct such discovery have been frustrated or delayed by non-disclosure agreements between the defendant and other insureds. See Pl.’s Mem. Opp’n Def.’s Mot. Partial Summ. J. Ex. 6 (unsworn affidavit of plaintiff’s counsel).

Aguilar, 825 F. Supp. at 458; Lees, 643 A.2d at 1285-86, the Court concludes no reasonable juror could return a verdict in the plaintiff's favor as to this claim.

B. Misrepresentations and False Advertising of Insurance Policies

In Count Four of the complaint, the plaintiff alleges that the defendant misrepresented and falsely advertised its insurance policies in violation of CUIPA, Conn. Gen. Stat. § 38a-816(1).³ He alleges that the defendant induced him in 1984 to purchase and maintain the disability insurance policy by issuing and circulating to him estimates, illustrations, and statements misrepresenting the benefits of the policy. See Compl. ¶20.

“[R]egardless of whether there is a misrepresentation that induces or tends to induce” an insured to purchase and maintain an insurance policy, CUIPA permits recovery only if the insured establishes that a defendant insurer made a purposeful misrepresentation. Heyman Assocs. No. 1 v. Ins. Co. of Penn., 653 A.2d 122, 141-42 (Conn. 1995) (interpreting CUIPA, Conn. Gen. Stat. § 38a-816(1)). However, the plaintiff here concedes that he cannot point to literature or other evidence that he saw or received in 1984 which induced him to purchase and maintain the disability policy issued by the defendant, and which constituted misrepresentations. The plaintiff's deposition testimony that he never concealed the nature of his work activities from the defendant is also insufficient as a matter of law to demonstrate that the defendant intentionally misrepresented the terms and conditions of the disability policy purchased by the plaintiff. See Def.'s Mot. Partial Summ. J. Ex. O, at 165. Further, the defendant's investigation of the plaintiff's work activities prior to issuing the disability insurance policy combined with its later refusal to pay his claim under that policy is not sufficient to demonstrate that the defendant

³See supra note 1.

intentionally misrepresented coverage.⁴ Accordingly, because the plaintiff has presented no other evidence in support of this claim, the Court concludes that the plaintiff has failed to present sufficient evidence to create a genuine issue of material fact as to whether the defendant intentionally induced the plaintiff to purchase and maintain the disability insurance policy through misrepresentations.

C. Unfair Trade Practices

In Count Five of the complaint, the plaintiff alleges that the defendant committed unfair trade practices in violation of CUIPA, Conn. Gen. Stat. § 38a-815.⁵

Resolving all ambiguities and drawing all inferences in favor of the plaintiff, Count Five appears to allege that the defendant's CUIPA violations, as described in Counts Three and Four of the complaint, also constitute unfair trade practices in violation of CUIPA. Nevertheless, because the plaintiff has failed to present sufficient evidence to withstand summary judgment as to Counts Three and Four, those claims cannot form the basis of an unfair trade practices violation under CUIPA.⁶

⁴Nor for the reasons previously indicated would the statements from the defendant's 1993 and 1995 annual reports constitute sufficient evidence of intentional misrepresentations by the defendant.

⁵See supra note 1.

⁶The plaintiff mentions in Count Five that he mailed a copy of his complaint to the Attorney General for the State of Connecticut, in accordance with Conn. Gen. Stat. § 42-110g. He also requests punitive damages under Conn. Gen. Stat. § 42-110g. However, the plaintiff only cites to CUIPA, and does not mention the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. § 42-110a et seq., by name or by statutory citation in that count. Accordingly, the Court concludes that he has not alleged a violation of CUTPA, only CUIPA.

IV. Conclusion

For the preceding reasons, the defendant's motion for summary judgment [Document #62] is GRANTED as to the plaintiff's CUIPA claims, and is DENIED as to the plaintiff's claims for breach of contract and breach of the implied covenant of good faith and fair dealing. Accordingly, only Counts One and Two remain in this case.⁷

SO ORDERED this 29th day of August 2001, at Hartford, Connecticut.

/s/
Christopher F. Droney
United States District Judge

⁷The Court has also considered the parties' evidentiary objections to various affidavits and other documents presented in support of their summary judgment papers. The objections are overruled without prejudice to renewal at trial.